

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

LARRY D. HELTON,)
)
Plaintiff,)
)
v.) **CIVIL NO. 5:05CV269**
)
JO ANNE B. BARNHART,)
Commissioner of Social Security,)
)
Defendant.)

**CONSENT ORDER WITH REMAND
PURSUANT TO SENTENCE FOUR OF 42 U.S.C. § 405(g)**

The United States of America has moved this Court, pursuant to sentence four of 42 U.S.C. §405(g), to enter a judgment reversing the defendant Commissioner's decision with a remand of the cause to the defendant Commissioner for further administrative proceedings.

On remand to the Commissioner, the Administrative Law Judge, ("ALJ") will 1) afford Plaintiff the opportunity to submit updated evidence; 2) evaluate Plaintiff's obesity in accordance with *Social Security Ruling* 02-1p; 3) re-evaluate Plaintiff's educational and literacy levels in accordance with 20 C.F.R. § 404.1564(b) and 4) if necessary, obtain supplemental vocational expert input.

Pursuant to the power of this Court to enter a judgment affirming, modifying or reversing the Commissioner's decision with remand in Social Security actions under sentence four of 42 U.S.C. §405(g), and in light of the Commissioner's and plaintiff's request to remand this action for further proceedings, this Court hereby:

REVERSES the Commissioner's decision under sentence four of 42 U.S.C. § 405(g) with a remand of the cause to the Commissioner for further proceedings. *See Melkonyan v. Sullivan*, 111

S. Ct. 2157(1991). The court will enter a separate judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure simultaneously herewith.

As there remains no justiciable dispute pending between the parties, upon the entry of judgment, the Court's jurisdiction over this case shall terminate except for purposes of consideration and determination of motions for attorneys fees, including any motion for such fees under the Equal Access to Justice Act (EAJA). Plaintiff shall have thirty (30) days from final judgment in which to file any motion for attorneys fees under EAJA in this matter.

Signed: May 18, 2006

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

